



Child Trafficking

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INTRODUCTION

Research objective

- The purpose of the study is to appraise about human trafficking specially child trafficking at different level.
- The study will focus on the reason for child trafficking.
- It will also examine the steps taken by the government to prevent child trafficking.

Research methodology

The research methodology adopted for the purpose of the study is doctrinal source of data which is used including secondary data i.e. statutes, books, articles, reports, and include online websites.

Research question

In the context of the above objective the researcher will examine the following research question.

- Who are the victims and culprits of child trafficking?
- What measures can be taken to prevent child trafficking?
- Does our constitution need a reform?

Interpretation of the Term Trafficking

What is Trafficking

Human trafficking is major international issue of twenty first century. Every year, millions of men, women, and children are trafficked in countries around the world, including India. It is estimated that human trafficking generates many billions of dollars

profit every year, second only to drug trafficking which is the most profitable form of transnational crime.

The oxford dictionary defines traffic as 'trade which is illegal'. It has also been described as 'transportation of goods or people by road, rail, air, sea, etc'. Human trafficking is the process of compelling a person to perform labour through force, fraud or coercion. Often described as modern-day slavery, human trafficking exploits people's dreams, robs them of their dignity, and violates their basic human rights. The word trafficking basically means dealing in something, especially illegal.

The UN defines human trafficking as the recruitment, transportation, transfer, harbouring, or receipt of persons by improper means (such as force, abduction, fraud, or coercion) for an improper purpose including forced labour or sexual exploitation. There are an estimated 20.9 Million people trapped in some form of slavery today. It's sometimes called "Modern-Day Slavery" and sometimes "Human Trafficking." Human trafficking is a hidden crime as victims rarely come forward to seek help because of language barriers, fear of the traffickers, and/or fear of law enforcement.

The UN Convention against Transnational Organized Crime (UNTOC). This Convention has been signed by the government of India.

Art. 3¹

a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of

¹ Art. 3 of UN Convention against Transnational Organized Crime

persons, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or of receiving of payments or benefits to achieve the consent of a person having control over another person's, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this art. shall be irrelevant where any of the means set forth in sub paragraph (a) have been used;

c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub paragraph (a) of the art.;

d) Child shall mean any person under eighteen years of age.

Trafficking violates a child's right to grow up in a family environment and exposes him or her to a range of dangers, including violence and sexual abuse. In India over the last decade, the volume of human trafficking has increased though the exact numbers are not known, it is one of the most lucrative criminal trades, next to arms and drug smuggling undertaken by highly organized criminals.

What are Children Trafficked for?

Human trafficking can be separated into sex trafficking and labour trafficking. Though they have different purposes, there are general trends that explain the overall root causes of child trafficking. According to the Huffington Post, approximately 75 to 80 percent of child trafficking is for slavery and sex. The two main reason highlighted here for child trafficking are;

-Labour

-Sexual exploitation

These are the two broadly classified reasons for child trafficking.

Other reasons can be;

- illegal Activities
- Begging
- Organ trade
- Drug peddling smuggling
- Entertainment and Sports
- Circus, dance troupes, beer bars etc.

There are huge number of more reasons why the children are being trafficked. Children, at times, are kidnapped from their homes and sold for numerous reasons. These reasons include begging, child labour, or sometimes prostitution. The sad note is that the children who are been kidnapped are extremely difficult to track down.

Children, specifically girls are extremely vulnerable to these crimes. Some of the numerous factors that contribute to this social issue include lack of employment opportunities, poor social status, political uprising, and economic deprivation. Many of the children are forced into illegal activities such as organ trade, begging and amputation of limbs, smuggling and many more.

If we do an in-depth analysis, we can find that the major reason behind this social evil is poverty. Even today, there are families in India which struggle anything to afford even the basic necessities of life. The situation is so worse in some places that parents are forced to sell their children to gangs and crooks. Widespread poverty drives parents and families into a situation that they are forced to hurt and sell their own child for currency and basic necessities.

The service industry, particularly restaurants and kitchens, are common exploiters of human trafficking. There is also a demand for cheap domestic and agricultural labour. Employees are often initially promised a safe work space and a steady salary, only to later find that they are paid less than minimum wage and worked over time. Business owners guilty of this behaviour continue to practice these illegal norms because the victims of trafficking can rarely protect themselves and they have very few alternatives.

Legal framework and steps.

It is up to law enforcement to investigate suspected cases of human trafficking. Initiatives to diminish these causes of human trafficking include international cooperation agreements, national policies against trafficking, improved immigration policies that can detect the exit or entry of humans being illegally trafficked, and increased infrastructure to protect those that are being exploited for labour or sex.

India

India is having a wide framework of laws enacted by the Parliament as well as by some State legislatures, apart from provisions of the Constitution which is the supreme law of the country. There are numerous provisions given in our constitution and also in other laws also to prevent trafficking.

Legal Framework to Address Trafficking in India

It should be noted that there is no available information on the scope of trafficking for purpose other than prostitution in the available sources and literature. National Crime Record Bureau of the Indian Ministry of Home Affairs is a starting point for analysing the available data, that collect the data on trafficking through State Crime Report Bureaus and Union Territories, Subsidiaries of the NCRB that obtain data from District Crime Report Bureaus. This presents an indication of the level or reporting of human trafficking within India. Data available through NCRB is collected through first information reports (FIRs), lodged in police stations. FIRs can be lodged by victims, NGOs and any member of civil society.

Art. 23² of the Constitution Guarantees right against exploitation; prohibits traffic in human beings and forced labour and makes their practice punishable under law. Art. 24 of the Constitution Prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

Traffic in human being means to deal in men and women like goods such as sell or let otherwise dispose them off. It would include traffic in women and children for other immoral purposes³

² The constitution of India (art. 23)

³ Raj Bahadur v. Legal Remembrancer AIR 1953 SC 1409

Indian Penal Code, 1860 There are 25 provisions relevant to trafficking; significant among them are:

Sec. 366A – procurement of a minor girl (below 18 years of age) from one part of the country to the another is punishable.

Sec. 366B – importation of a girl below 21 years of age is punishable.

Sec. 374 – provides punishment for compelling any person to labour against his will.

In the case of People's Union for Democratic Rights v. Union of India⁴

The scope and ambit of art. 23 is been considered by Supreme Court in detail. It was held that the scope of art. 23 is very wide and unlimited and strikes at "traffic in human beings" and "beggar" and other forms of forced labour wherever they are found. Thus, this art. focusses at forced labour in whatever form it may manifest itself because it is violative of human dignity and contrary to basic human values. Here the word "force" was construed widely as to include not only physical or legal force but also force arising out of compulsion of economic circumstances.

Art. 39- Certain policies to be followed by the state This art. specifically requires the state to ensure adequate means of livelihood to its people, fair distribution of wealth, equal pay for equal work and protection of children and labour from trafficking. The makers of the Constitution did not desire that there should be a society where a citizen's will not have the dignity of the individual⁵

International law

International law is a powerful channel for combating human trafficking. the crime of human trafficking need to receive immense international attention as a social problem and area which need to study over the past decade. Moreover, different other abuses are also being committed while the course of trafficking which

⁴ AIR 1982 SC 1943

⁵ Keshavanada Bharti v. State of Kerela (1973) 4 SCC 225, 458 (per Shelat & Grover, JJ.) AIR 1973 SC 1461.

contravenes the National Laws as well as International Laws.

Prevention and combating the human trafficking requires all stakeholders at National as well as at International level to acquire their co-operation on prosecution, prevention and protection.

Enforcement of international laws in regards with human trafficking is the most effective as well as efficient when it is incorporated into regional and domestic legislation. A key role is being played by Regional and domestic instruments in the prevention and elimination of human trafficking.

Human Trafficking and International Law-

Art. 4⁶ of the Universal Declaration of Human Rights

The above Art. says that person should not be detained under slavery and servitude and all the forms which come under such slavery and servitude should be prohibited completely. In addition to the above Indian Constitution recognizes the right of persons to freedom of movement and residence⁷ and also recognizes the right to nationality⁸.

Art. 8(1) and (2) of the International Covenant on Civil and Political Rights

Art. 8(1) and (2)⁹ respectively, states that the person should not be apprehended under bondage and servitude. All the trade pertaining to such slavery and servitude should be forbidden in its all forms. In its recent General Comment, the Human Rights Committee has addressed the trafficking in women, children and forced prostitution under Art. 8 of the International Covenant Civil and Political Right and has asked states parties to furnish information regarding the measures being taken to eliminate these practices, both within and across borders. Human trafficking has been addressed more meticulously and exclusively in international law in the Trafficking Convention.

⁶ Universal declaration of human rights, art. 4

⁷ Constitution of India art. 13

⁸ Constitution of India art. 15

⁹ International Covenant On civil and Political Right, Art. 8 (1) (2)

Art. 10 (3) of International Covenant on Economic, Social, and Cultural Rights¹⁰

Art. 10 (3) of the Covenant on Economic, Social, and Cultural Rights states that every children and young people should be given a protection and assistance without any discrimination or biasness on the basis of caste, for reason of parentage and any other condition. They should also be protected from any kind of economic and social exploitation. Even it is specifically provided by the convention that their employment which is dangerous and harmful to their health and development must be punishable by law.

Moreover, this convention cast duty upon state parties to set the age limit for the children below which paid employment of child labour shall be prohibited and punishable under law.

The United Nations Global Initiative To Fight Human Trafficking (UN.GIFT) is "managed by the United Nations Office on Drugs and Crime (UNODC) in cooperation with the International Labour Organization (ILO), the International Organization for Migration (IOM), the Office of the High Commissioner for Human Rights (OHCHR), the Organization for Security and Cooperation in Europe (OSCE), and the United Nations Children's Fund (UNICEF)" and their respective conventions, declarations and also protocols. The UN system offers practical help to States, to draft laws and create comprehensive national and international anti-trafficking strategies and assist with resources for implementing them.

Factors leading to child trafficking

Every day 3000 children are victims of child trafficking, according to estimates. The profits from human trafficking, particularly that of women and children, reaches up to 10 billion US dollars per year according to estimates made by the International Organization for Migration. The root causes of trafficking are various and often differ from one country to another. Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural and other factors. There are, however, many factors that tend to be common to trafficking in general or found in a wide range of different regions, patterns or cases.

¹⁰ Art. 10 (3) of the Covenant on Economic, Social, and Cultural Rights

Some of the common factors are local conditions that make populations want to migrate in search of better conditions: poverty, oppression, lack of human rights, lack of social or economic opportunity, dangers from conflict or instability and similar conditions. Political instability, militarism, civil unrest, internal armed conflict and natural disasters may result in an increase in trafficking. These factors tend to exert pressures on victims that “push” them into migration and hence into the control of traffickers, but other factors that tend to “pull” potential victims can also be significant.

Poverty and wealth are relative concepts which lead to both migration and trafficking patterns in which victims move from conditions of extreme poverty to conditions of less-extreme poverty. Some parents sell their children, not just for the money, but also in the hope that their children will escape a situation of chronic poverty and move to a place where they will have a better life and more opportunities.

Poverty is not the only root cause of trafficking. It can broadly be classified in 2 factors:

1. Demand
2. Supply

Demands like cheap labour, child marriage, Sex tourism, Internet pornography, begging and many more. On the other hand, supply factors can be Poverty, Female, Infanticide, Child marriage, Natural Disasters (floods, cyclones etc.), Domestic violence, Unemployment, Lack of Employment opportunities, lack of education.

Other than the above reasons corruption is also one of the major reason for child trafficking.

While the span of corruption, going into thousands of crores, is part of the everyday news, its reach is far more pervasive in rural India, triggering off poverty, human trafficking, inequality and casual bribery. More importantly, it has created mindsets where people seek to become rich overnight, even going as far as joining gangs and committing crimes. In this atmosphere, the highly lucrative human trafficking business seems quite an obvious choice.

India has seen a series of political parties coming to power. There has been a general lack of will amongst the political class to pass a strong anti-child trafficking legislation. The list of pending cases in

Indian courts, including the Supreme Court, goes into the hundreds of thousands. This creates a lack of strong legal precedent against child trafficking and emboldens the traffickers.

Role of different sectors

Role of State

- Government at local level and source areas should create compulsory high quality education.
- Government must also focus on providing equal employment opportunities and income generation programme.
- Government should produce relevant IEC (The International Electrotechnical Commission) materials; promote sensitization programmes for teachers in government schools, parents and community Workers.
- Government should include gender centered education system in schools and introduce subjects of child sexual abuse and trafficking.
- The government of different nations must share the information with each other to evolve a programme that will help both the countries in preventing trafficking.

Role of NGOs

- The community should be sensitized about trafficking the community members should be motivated to keep a watch in the community for irregular movement of child victims to and from area their possible traffickers and hideouts.
- NGOs working in the rural areas should ensure that parents are aware of safe migration practices.
- NGOs must also give awareness to the people regarding the rights available against trafficking as well as child trafficking is inappropriate and illegal and has negative consequences also.
- Victims can be made aware of places and institutions where they can seek help.

Suggestion and conclusion

Child or human trafficking cannot be totally eradicated, but by taking some appropriate measures it can be prevented on a great extent. In doing so our Indian law and government has taken various steps stated above to prevent trafficking. The culprit must be punished with severe punishment so that the same act cannot be repeated.

After a proper analysis of each and every aspect of human trafficking, the conclusion is that the risks

involved for a trafficker need to be enlarged through various provisions of laws. In India specifically, one needs to ensure the level of cooperation between the victims of trafficking and law officers should be increased to bring such low-les creatures to justice. Globally further steps should be taken to ensure that awareness is spread. The international cooperation at the level of police and at a judicial level should be increased. International cooperation also requires specialize departments of traffic control.

